



# Shepard Law Office, Inc.

Richard Shepard, J. D., Attorney at Law

October 11, 2005

Rob McKenna, Washington Attorney General  
1125 Washington St. SE  
PO Box 40100  
Olympia, WA. 98504-0100

Norm Maleng, King Co. Prosecuting Attorney  
W554 King County Courthouse  
516 Third Avenue  
Seattle, WA 98104

Re: Bennett v. KING-TV – NOTICE PER R.C.W. § 42.17.400(4)

To Whom It May Concern:

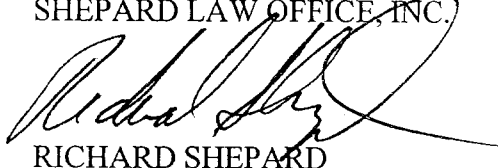
Please find enclosed a copy of an amended complaint recently filed in King County Superior Court involving former gubernatorial candidate Ruth Bennett and KING-TV and regarding the 2004 candidate debates aired by the television station. As the amended complaint is currently postured, Ms. Bennett has claimed that KING-TV discriminated against her on the basis of sexual orientation or political ideology under Seattle Municipal Code 14.04.

However, the facts appear to support another claim that the debates and/or the polls taken amounted to illegal in-kind contributions to the candidates who appeared in the debates, in violation of R.C.W. § 42.17.640(1).

This letter is your notice as required by R.C.W. § 42.17.400(4) that Ms. Bennett intends to pursue this matter judicially, by further amendment to the complaint, if no state or local enforcement agency acts appropriately within the time required by the statute.

Please contact me if you have any questions or concerns, if you need additional information, or if your agency makes a formal determination regarding its involvement in this matter.

Sincerely,  
SHEPARD LAW OFFICE, INC.

  
RICHARD SHEPARD

RS:mas  
Enclosures

Cc: client

EXHIBIT #1

1 of 21

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN  
8 AND FOR KING COUNTY

9 RUTH BENNETT,

10 Plaintiff,

11 v.

12 BELO CORPORATION and/or KING  
13 BROADCASTING COMPANY, d/b/a KING-  
14 TV,

15 Defendant.

Case No: 05-2-27309-7 SEA

AMENDED COMPLAINT FOR  
INJUNCTIVE AND/OR  
DECLARATORY RELIEF, AND  
FOR DAMAGES AND OTHER  
RELIEF

16 **I. CASE OVERVIEW**

17 1.1 This complaint arises out of the 2004 gubernatorial election contest in the State of  
18 Washington. The Plaintiff, Ms. Ruth Bennett, was a Libertarian Party candidate  
19 for Governor. The Defendant, KING-TV,<sup>1</sup> broadcasts television signals in the  
20 Seattle, Washington area, and hosted pre-election debates involving other  
21 candidates of other political parties for governor, but excluded Ms. Bennett and  
22 the Libertarian Party from those debates.

23  
24 <sup>1</sup> KING-TV's Internet web site says it is "owned by Belo Corp., based in Dallas, Texas." However,  
25 "Belo Corp." does not appear to be registered to do business in Washington, while King Broadcasting Co.,  
is registered with the Washington Secretary of State and shown by the state Department of Revenue as  
doing business as KING-TV. The exact relationship of these entities is unknown to the Plaintiff.

AMENDED COMPLAINT FOR INJUNCTIVE  
AND/OR DECLARATORY RELIEF, AND FOR  
DAMAGES AND OTHER RELIEF - Page 1 of 7

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Tacoma, WA 98405  
(253) 383-2235

**EXHIBIT #1**  
2 of 21

1.2 Defendant failed to employ a fair, non-partisan and evenhanded process for candidate selection, consequently discriminating against the Plaintiff because of either her sexual orientation or her political ideology or both, and making illegal in-kind contributions to other candidates who were selected.

## II. PARTIES

2.1 *Plaintiff.* Ms. Bennett is a resident of King County, Washington and was a candidate for Governor of Washington in 2004.

2.2 *Defendant.* KING-TV is an NBC-affiliated television station in Seattle. KING-TV's Internet web site says that it is "owned by Belo Corp., based in Dallas, Texas." However, "Belo Corp." does not appear to be registered to do business in Washington, while King Broadcasting Co., is registered with the Secretary of State and shown by the state Department of Revenue as doing business as KING-TV. The exact relationship of these entities is unknown to the Plaintiff. Plaintiff alleges KING-TV is owned and operated by either Belo Corp. or King Broadcasting Co., or both.

## III. FACTS

3.1 During the 2004 contest for Governor of Washington State KING-TV arranged for and hosted two debates for candidates for Governor. The first was September 7, 2004, before the state primary. The second debate was on October 12, 2004, between the state primary and the state general election.

3.2 The debates were held at the KING-TV studios in the City of Seattle. Members of the public were invited to attend the debates. The debates were made available to the general public over KING-TV broadcast facilities.

- 1 3.3 At the time of the debates three political parties qualified under Washington law  
2 as "major" political parties, and were required by state law to nominate their  
3 candidates for public office by direct public primary rather than by convention or  
4 other means – the Democratic Party, the Libertarian Party, and the Republican  
5 Party.
- 6 3.4 At the time of the first debate six candidates were seeking nomination of the  
7 Democratic Party, two candidates were seeking nomination of the Libertarian  
8 Party and three candidates were seeking nomination of the Republican Party.
- 9 3.5 The plaintiff, Ruth Bennett (L), was one of two candidates for the Libertarian  
10 Party nomination. Ms. Bennett was known as a lesbian and activist in Gay,  
11 Lesbian, Bi and Trans-gender causes. Part of her campaign focused on the issue  
12 of "same-sex marriage."
- 13 3.6 The 9/7/04 KING-TV debate featured Ron Sims (D), and Dino Rossi (R).  
14 Christine Gregoire (D) was invited but declined to attend. No other candidates  
15 were invited or identified in the broadcast. Bennett (L) found out about the  
16 debate through media advertisements, and attempted to attend this debate as  
17 either a candidate or an audience participant but was excluded by an  
18 unnecessarily rude KING-TV employee.
- 19 3.7 No practical or physical limitation precluded KING-TV from including Bennett  
20 (L) in this debate. Silent testimony to Gregoire's (D) refusal to participate in the  
21 first debate was given by placing an empty chair and microphone on the dais for  
22 the duration of the debate, which chair and microphone could have been made  
23 available to Bennett (L). The single empty chair implied erroneously that Sims  
24  
25

1 (D) and Rossi (R) and Gregoire (D) were the only candidates for nomination of  
2 any political party, and that there were no other legally qualified candidates for  
3 the office. The publicity value of the airtime allowed to each candidate who did  
4 participate exceeded the maximum contribution amount allowed by law. R.C.W.  
5 § 42.17.640(1),

6  
7 3.8 In the primary Bennett (L) secured the nomination of the Libertarian Party for the  
8 office of governor. By the time of the second debate, held October 12, 2004, the  
9 field for governor had narrowed to three candidates only: Gregoire (D), Bennett  
10 (L) and Rossi (R).

11 3.9 When the second debate occurred KING-TV had in its possession at least one  
12 public opinion poll, commissioned by KING-TV itself, the results of which did  
13 not identify Bennett (L) or the Libertarian Party. Nonetheless, that poll showed  
14 that "Other" enjoyed 5% support among likely voters when the only "Other"  
15 candidate in the race was Bennett (L).

16 3.10 There was no practical or physical reason to exclude Ruth Bennett from the  
17 second debate. Nonetheless, the second debate featured Rossi (R) and Gregoire  
18 (D) only, and Bennett (L) was not invited or identified in the broadcast. The  
19 publicity value of the airtime allowed to each candidate who did participate  
20 exceeded the maximum contribution amount allowed by law. R.C.W. §  
21 42.17.640(1),

22  
23 3.11 In an effort to ascertain the basis for KING-TV's selection of only Sims (D),  
24 Rossi (R) and Gregoire (D) as debate participants and why Bennett (L) was  
25 excluded, and more specifically why only Sims (D) and Rossi (R) were placed on

1 the same days at a time when they were seeking the nomination of different  
2 political parties, the attached correspondence, marked "Exhibit A", occurred  
3 between Bennett's (L) representative and KING-TV's representative.

4 3.12 According to the said correspondence Bennett (L) was not included in the debates  
5 because KING-TV chose candidates in accordance with "guidelines set forth by  
6 the League of Women Voters" and because no "credible poll" showed she had  
7 adequate support. However, KING-TV's own polls didn't even attempt to  
8 determine Bennett's (L) support.

9  
10 3.13 In addition, the guidelines identified are not those of LWV but were those of the  
11 Debate Advisory Standards Project, which was in turn sponsored by the Pew  
12 Charitable Trust. The Debate Advisory Standards provide, *inter alia*, that debate  
13 sponsors "should form a Debate Standards Advisory Board, composed of a  
14 representative membership of citizens, to oversee the establishment and  
15 implementation of candidate inclusion criteria ..."

16 3.14 KING-TV has failed after request to identify any Debate Standards Advisory  
17 Board members, or to provide any evidence that the Board (if it existed)  
18 determined or applied any criteria (whether or not it was objective) for inclusion  
19 of particular candidates in the debates or the exclusion of others.

20  
21 3.15 Because the 9/7/04 debate was created, organized and financed by KING-TV, and  
22 because KING-TV never established or applied any fair, nonpartisan and  
23 evenhanded standards to determine who should appear in the debates, the  
24 decision to include only Rossi (R) and Sims (D) constituted an in-kind  
25 contribution to those candidates.

1 3.16 The second debate on 10/12/04 was also created, organized and financed by  
2 KING-TV. Because KING-TV never established or applied any fair, nonpartisan  
3 and evenhanded standards to determine who should appear in the debates, the  
4 decision to include only Gregoire (D) and Rossi (R) constituted an in-kind  
5 contribution to the campaigns of those candidates.

6 **III. CAUSES OF ACTION**

7  
8 4.1 KING-TV excluded Ms. Bennett from the debates either because of her sexual  
9 orientation or because of her political ideology or both. The exclusion constitutes  
10 unlawful discrimination as defined in Seattle Municipal Code section  
11 14.04.030(F).

12 **WHEREFORE**, the plaintiff requests judgment as follows:

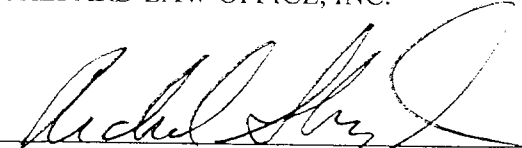
- 13 1. For a monetary award of damages in such amount as is authorized by law;  
14 2. For an injunction prohibiting KING-TV and its affiliates from sponsoring or  
15 publishing so-called "political debates" which are unaccompanied by sufficient  
16 safeguards to assure that its programming is nondiscriminatory.  
17 3. For leave to amend this complaint, after proper notice to the Washington Attorney  
18 General and the King County Prosecutor under R.C.W. § 42.17.400(4), to seek  
19 relief under Chapter 42.17 R.C.W. for the televising of the KING-TV governor  
20 debates of 9/7/04 and 10/12/04 without proper standards for candidate  
21 participation and making illegal in-kind contributions under R.C.W. §  
22 42.17.640(1).  
23  
24 4. For leave to amend this complaint to add other new claims and grounds for relief  
25 as discovery proceeds.

1 5. For Plaintiff's reasonable attorney fees as authorized by law and any other  
2 recognized grounds in equity;

3 6. For such other and further relief as to the court seems just and reasonable.

4 DATED Tuesday, October 11, 2005, at Tacoma, Washington.

5 SHEPARD LAW OFFICE, INC.

6  
7   
8 RICHARD SHEPARD, WSBA # 16194  
9 J.S. MILLS, WSBA # 15842  
Attorneys for Plaintiff

10 VERIFICATION

11 I, RUTH BENNETT, declare on penalty of perjury under the laws of the State of  
12 Washington that I am the Plaintiff and I have read the foregoing Amended Complaint  
and certify that it is true and correct to the best of my knowledge.

13 DATED Tuesday, October 11, 2005, at Tacoma, Washington.

14  
15  
16   
17 RUTH BENNETT, Plaintiff



1 5. For Plaintiff's reasonable attorney fees as authorized by law and any other  
2 recognized grounds in equity;

3 6. For such other and further relief as to the court seems just and reasonable.

4 DATED Tuesday, October 11, 2005, at Tacoma, Washington.


5  
6 SHEPARD LAW OFFICE, INC.

7  
8 RICHARD SHEPARD, WSBA # 16194  
9 J.S. MILLS, WSBA # 15842  
Attorneys for Plaintiff

10 VERIFICATION

11 I, RUTH BENNETT, declare on penalty of perjury under the laws of the State of  
12 Washington that I am the Plaintiff and I have read the foregoing Amended Complaint  
and certify that it is true and correct to the best of my knowledge.

13 DATED Tuesday, October 11, 2005, at Tacoma, Washington.

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16 RUTH BENNETT, Plaintiff

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AMENDED COMPLAINT FOR INJUNCTIVE  
AND/OR DECLARATORY RELIEF, AND FOR  
DAMAGES AND OTHER RELIEF - Page 7 of 7  
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9 of 21

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR KING COUNTY

8 RUTH BENNETT,

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10 v.

11 BELO CORPORATION and/or KING  
12 BROADCASTING COMPANY, d/b/a  
KING-TV,

13 Defendant.

Case No: 05-2-27309-7 SEA

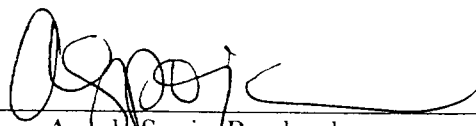
DECLARATION OF ANGELA  
SPOJA

14  
15 I, ANGELA SPOJA, declare under penalty of perjury under the laws of the state of  
16 Washington and GR 17 as follows:

17 I received the attached documents entitled the last page of the AMENDED  
18 COMPLAINT FOR INJUNCTIVE AND/OR DECLARATORY RELIEF; AND FOR  
19 DAMAGES AND OTHER RELIEF signed by Ruth Bennett, by facsimile and examined  
20 it. The document consists of one page, including this one, and is complete and legible.

21 DATED Tuesday, October 11, 2005, at Tacoma, Washington.

22 SHEPARD LAW OFFICE, INC.

23  
24   
25 Angela Spojka, Paralegal

- Page 1 of 2

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SHEPARD LAW OFFICE, INC.

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Tacoma, WA 98405  
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EXHIBIT #1

10 of 21

JOHN STRATFORD MILLS  
Counselor at Law

December 29, 2004

Eric A. Christensen  
Vice President / General Manager  
Belo Corporation/KING-5 TV  
333 Dexter Avenue North  
Seattle, WA 98109

Re: Ruth Bennett

Dear Mr. Christensen:

As you are no doubt aware, KING-5 TV hosted two different debates during the 2004 election pertaining to the Washington State Governor's race. The first was Tuesday, September 7, 2004 featuring Ron Sims (Democrat) and Dino Rossi (Republican). Ms. Gregoire was invited, but declined. The second featured Dino Rossi (Republican) and Christine Gregoire (Democrat) and occurred on October 12, 2004 and was moderated by KING-5's Jean Enerson.

I have been retained by Ruth Bennett, who you probably recognize as the Libertarian Candidate for Governor in the 2004 race. For reasons not exactly clear, Ms. Bennett was excluded from these debates.

Ms. Bennett is an "out" lesbian, who ran emphasizing her support for same-sex marriage. And, you probably know that Seattle Municipal Code section 14.08.030 (B) makes it unlawful "for any person to discriminate in a place of public accommodation" by "(G) Denying, directly or indirectly, the full enjoyment of any available goods, services, accommodations, facilities, privileges or advantages [of the facility]." Of course, unlawful discrimination in Seattle includes discrimination on the basis of sexual orientation and on the basis of political ideology. See 14.04.030(F).

The law is remedial and is quite broad, imposing liability on persons who aid or abet unlawful discrimination.

Ms. Bennett is puzzled by KING-5's decision to exclude her from every public debate it hosted. Particularly troublesome is her exclusion from the Sims-Rossi debate where a third podium was arranged in case Ms. Gregoire decided at the last minute to attend.

JOHN STRATFORD MILLS  
3000 4th Avenue North, Suite 1000  
Seattle, WA 98109  
Phone: (206) 461-1000  
Fax: (206) 461-1001  
E-mail: jsmills@stratfordmills.com

FILED A

EXHIBIT #1

11 of 21

Eric A. Christensen  
December 16, 2004  
1pg

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I think we can fairly exclude a decision based on ability to physically accommodate three candidates because KING-5 planned for a three-person debate in case Ms. Gregoire showed at the Rossi-Sims debate. Plus, common sense just tells me that there would be no serious problem accommodating three participants.

The earlier debate is particularly troubling because Sims and Rossi weren't even facing off against each other as the debate occurred at a time when Ms. Gregoire was challenging Ron Sims for the Democratic nomination.

I have thought about vague notions of "relevance," but that doesn't seem to be a plausible explanation since - in the end, Ms. Bennett was a crucial part of Mr. Rossi winning - or nearly winning. (See [http://seattlepi.nwsource.com/local/203607\\_libertarian14.html](http://seattlepi.nwsource.com/local/203607_libertarian14.html)) Certainly, Ms. Bennett proved more influential than Ron Sims, who was invited.

Plus, it seems that precisely because these debates are supposedly a "public service," organized to present the electorate with a complete, unbiased, and "neutral" presentation of all political views, I'm having trouble figuring out some basis for excluding Ms. Bennett that complies with the Seattle Ordinance.

All things seem to point to a discriminatory decision based either on Ms. Bennett's sexual orientation or on her political ideology. But then, I really don't know how or why KING-5 made its decision.

In an effort to resolve things without running into court, I am writing and asking you to explain in detail how it was that Ruth Bennett came to be excluded from the debates hosted by KING-5. What information or evidence did you have to justify excluding Ms. Bennett from this very public event?

Would you please just let me know what defense you believe is available to KING-5 if Ms. Bennett seeks relief under the Seattle Ordinance?

Very truly yours,

**FILE COPY**

J. Mills

EXHIBIT #1  
12 of 21

John Stanford Mills  
Counselor at Law  
944 Court E  
Tacoma, Washington 98402

January 5, 2005

Dear Mr. Mills:

We certainly do not relish the idea of excluding any candidates from our debates. Practical considerations, however, dictate that on occasion we must. Contrary to your suggestion our exclusionary principle is not the number of pollsters available or the sexual orientation of the candidate. We have chosen to adhere to the long-standing guidelines set forth by the League of Women Voters. Unfortunately, using that standard criteria, Ms. Bennett did not meet even the minimal criteria for inclusion in one of our debates: she did not receive five percent of the support in any credible statewide poll that we are aware of; she did not show significant financial support for her candidacy; and her party did not receive five percent of the statewide vote in the previous gubernatorial election.

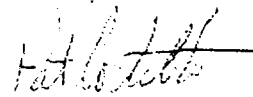
Even though she failed to meet these guidelines we still would have included Ms. Bennett had she held the office previously or received 30 percent of the vote in a prior candidacy for governor.

If you'd like a closer look at the guidelines, please visit:  
<http://www.debateproject.com/introduction/index.cfm>

Needless to say, our coverage of electoral politics is not limited to sponsoring candidate debates. I would encourage Ms. Bennett to keep in contact with our political reporters and producers for coverage of any future campaign. Furthermore, we look forward to including her in a debate when she has met the guidelines for inclusion.

Thanks for your inquiry.

Sincerely,

  
Pat Costello  
Executive News Director  
KING 5 News

JOHN STRATFORD MILLS  
Counselor at Law

January 18, 2005

Pat Costello  
Executive News Director  
KING 5 News  
333 Dexter Avenue North  
Seattle, WA 98109

Re: *Ruth Bennett*

Dear Pat Costello:

Thanks for your letter of January 5<sup>th</sup>. Some of the statements there are rather remarkable.

First, you say that using the "standard criteria" Ms. Bennett was excluded because "she did not receive five percent of the support in any credible statewide poll that we are aware of." That strikes me as odd.

There was a SurveyUSA poll conducted between September 19, 2004 and September 20, 2004. With regard to the Governor's race, it found 46% favored Rossi, 47% favored Gregoire, and 5% favored "other." Since Ms. Bennett was the only "other," this poll seems to find that she meets the very criteria you say was applied.

It seems odd for you to be "unaware" of the poll since it was commissioned by KING TV Seattle and KHQ TV Spokane. You can find the poll online at [http://www.surveyusa.com/2004\\_Elections/WA040922pressengo\\_vag.pdf](http://www.surveyusa.com/2004_Elections/WA040922pressengo_vag.pdf).

I guess what troubles me most about your letter is that Ms. Bennett *did* meet the principal standard you say you were using. And so, more than ever, it seems she *must* have been excluded for her sexual orientation or political ideology. I mean, really your own poll data shows Ms. Bennett meeting the standard you tell me was applied. Am I missing something?

2004 Election - Tacoma, Washington  
12/17/2004  
Journal of Media and the Environment

EXHIBIT #1

14 of 21

There are other things about the standards you used that call for further comment. Under the guidelines you point to, the following is prescribed:

Before debate inclusion criteria are determined and before debates invitations are issued, electronic and print media - working together with other debate sponsors such as civic organizations and education institutions - should form a Debate Standards Advisory Board, composed of a representative membership of citizens, to oversee the establishment and implementation of candidate inclusion criteria in scheduled debates. It is essential that this process be conducted in a manner that is absolutely fair, nonpartisan and evenhanded.

If, in fact, you were using the stated criteria at the time of your decision, then you would have formed a Debate Standards Advisory Board.

The Advisory Board seems just absolutely essential because standard 7 for inclusion pertains to a showing of sufficient numbers of signatures on a nomination petition. However, as you know, in Washington only "minor" party candidates qualify for the election by signature petitions.

Ms. Bennett, being a candidate of a "major" party could *only* qualify for the ballot by filing into the primary and winning (which she did).

Under state law, no one can lawfully appear as a major party candidate merely by signature gathering *no matter how many signatures are gathered*. Hence, a "fair, nonpartisan and evenhanded" Citizen's Advisory Board almost certainly would have determined - on account of the peculiarities of Washington law - that qualifying through the primary election process demonstrated a sufficient modicum of support for inclusion, essentially that qualifying by meeting all major party standards for appearance on the ballot was the equivalent of meeting standard no. 7 for inclusion in any debate.

So, again, it seems likely - assuming you really applied the guidelines - that KING-5 would have such a Board of Citizen Advisors, and I'm curious about how your board interpreted Standard 7 specifically. I'd like to talk to the

board members and investigate their thinking - again to be sure Ms. Bennett was not excluded on impermissible grounds, and really to find out why they would not *include* Ms. Bennett under standard no. 7. Will you please identify your citizen board and provide contact information?

If no Citizens Advisor Board exists, why would KING-5 choose to ignore that particular part of the guidelines? In short, what basis did you have for picking and choosing part, but not all, of the standards supposedly applied by KING-5?

Federal Communications Commission law provides that "If any licensee shall permit any person who is a legally qualified candidate for any public office to use a broadcasting station, he shall afford equal opportunities to all other such candidates for that office in the use of such broadcasting station." A bona fide newscast, news interview, news documentary, or on-the-spot coverage of a news event are exempted. But this event seems not to be coverage of bona fide news. Instead, it was something set up, sponsored, and organized by KING-5; it's not "reporting" at all, but rather offering free use of your facilities to some, but not all, legally qualified candidates. (I know there have been some decisions indicating that debates may qualify as "on-the-spot news coverage but only if the inclusion standards are fair and impartial; generally meaning standards adopted by independent third-parties, like a Board of Citizen Advisors.)

Anyway, whether or not the debates you hosted *actually* violate section 315 of Title 47 seems less important to me right now than the fact that anyone with broadcast experience would see that excluding Ms. Bennet very likely might violate that federal law. And, of course, there is the Seattle Ordinance that might also be violated by her exclusion. In light of all that, if you were using the cited standards, and had actually reviewed these standards, I cannot figure out why you would not form the Citizens Advisory Board it calls for to finalize inclusion standards thus to assure you have "absolutely fair, nonpartisan, and evenhanded standards." But, of course, maybe you did have such a board.

I should say also that, while my inclination is to assume KING-5 acts with the utmost good faith, I wondered about your letter suggesting that you were following "long-standing guidelines set forth by the League of Women Voters," because you directed me to "The Debate Advisory Standards Project" which, on



its face, says it's sponsored by the Center for American Politics and Citizenship at the University of Maryland through a grant from Pew Charitable Trusts. Here, again, maybe I'm missing something you can clarify.

Finally, since it should be clear that all this anticipates possible litigation, will you please act to assure that every document, paper or electronic media material which mentions or discusses the standards you used for excluding Ms. Bennett among members of the KING-5 staff and co-sponsors of the debate are preserved? That's important because the law allows juries to infer facts from the absence of evidence, and I'm sure we both want to assure nothing is destroyed which might prove the nature of the objective standards you used.

Obviously, whatever standards were used, there must be some substantial discussion of those standards and how they apply, including discussion pro and con about formation of a Citizen's Advisory Board.

One would expect such discussions to be documented in many places, including e-mails back and forth between staff members and certainly outsiders who assisted in the debates, including co-sponsors. Maybe you can just forward me what you have in that regard without some formal discovery request.

Your thoughts on this are greatly appreciated and the explanations go a long way toward persuading Ms. Bennett and the Libertarian Party about the merits of any litigation.

Very truly yours,

**FILE COPY**

J. Mills

John Stratford Mills  
Counselor at Law  
944 Court E  
Tacoma, Washington 98402

January 28, 2005

Dear Mr. Mills:

We did not poll for Ruth Bennett in our survey immediately following the debate. It is true that in that poll "other" was the choice of five percent of those responding. Our pollster informs us, though, that "other" is not synonymous with Ruth Bennett.

More importantly, if you read the guidelines closely, the period after a primary is a so-called "in period" or pre-election period. For the purposes of deciding whether Ms. Bennett should be included we considered her performance in the primary. Here's what those guidelines say:

"To demonstrate seriousness of purpose plus significant public support to be included in debates during the pre-election period, the candidate shall meet all legal qualifications to hold the office and has either qualified for the ballot or is mounting a write-in campaign for the office sought. In addition, the candidate must meet one or more of the following inclusion criteria:

The candidate has received 10 percent or more of the vote, tested in a trial heat, in a professionally conducted public opinion survey by an experienced pollster based on a scientific sample of the entire electorate with a margin of error of less than five percent (at 95 percent level of confidence)."

The five percent figure cited in the previous letter was merely to point out that Ms. Bennett had not met the most minimal standards for inclusion in a debate, even one held during the so-called "out period". The period between the primary and the general election is definitely an "in period" for the purposes of these guidelines.

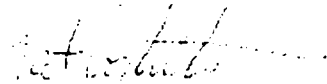
As you know, Ms. Bennett received less than one percent of the overall vote in the primary conducted less than a week before our survey.

Clearly we disagree with your interpretation of FCC statutes and our compliance with federal law. The debate did not violate the "equal opportunities" requirements of the Federal Communications Commission.

2

statute. As I'm sure you are aware the FCC ruled in Henry Geller, 95 FCC 2d 1236 (1983), that candidate debates qualify as on-the-spot coverage of a news event that is exempt under the statute, even when the debates are sponsored by the broadcaster. The fact that this debate was organized by KDNV-3 therefore does not make it something other than a news event exempt from Section 315 of Title 47.

Sincerely,



Pat Costello  
Executive News Director  
KING 3 News

cc: Stuart Dunwoody  
Davis, Wright, Tremaine LLP

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2005 OCT 13 AM 7:31

CLERK OF COURT  
GENERAL  
OF THE DISTRICT OF COLUMBIA

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON IN  
AND FOR KING COUNTY

RUTH BENNETT,

Plaintiff,

v.

BELO CORPORATION and/or KING  
BROADCASTING COMPANY, d/b/a KING-  
TV,

Defendants.

Case No: 05-2-27309-7 SEA

AMENDED SUMMONS

TO THE DEFENDANTS ABOVE NAMED:

A lawsuit has been started against you in the above entitled court by RUTH BENNETT, plaintiff. Plaintiff's claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

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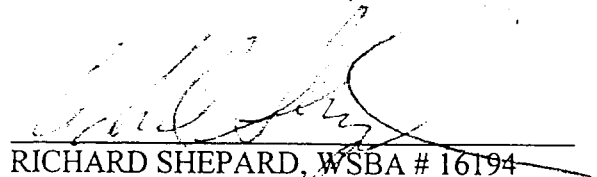
You may demand that the plaintiff file this lawsuit with the court. If you do so, the demand must be in writing and must be served upon the person signing this summons. Within 14 days after you serve the demand, the plaintiff must file this lawsuit with the court, or the service on you of this summons and complaint will be void.

If you wish to seek the advice of an attorney in this matter, you should do so promptly so that your written response, if any, may be served on time.

This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State of Washington.

DATED Wednesday, October 12, 2005, at Tacoma, Washington.

SHEPARD LAW OFFICE, INC.



RICHARD SHEPARD, WSBA # 16194  
J.S. MILLS, WSBA # 15842  
Attorneys for Plaintiff



Rob McKenna

# ATTORNEY GENERAL OF WASHINGTON

1125 Washington Street SE • PO Box 40100 • Olympia WA 98504-0100

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OCT 19 2005

Public Disclosure Commission

October 18, 2005

Vicki Rippie  
Executive Director  
Public Disclosure Commission  
P. O. Box 40908  
Olympia, WA 98504-0908

RE: Richard Shepard 45 Day Letter – Belo Corporation, King Broadcasting Company, d/b/a King TV

Dear Ms. Rippie:

The Attorney General's Office has received a complaint from Mr. Richard Shepard against Belo Corporation and King Broadcasting Company, d/b/a King TV. The complaint alleges violations of the Public Disclosure Law, Ch. 42.17 RCW, and was filed pursuant to RCW 42.17.400(4). As you know, RCW 42.17.400(4) requires action on the complaint within 45 days of its receipt. In this case, the complaint was received on October 13, 2005. I have provided a copy for your records.

As is customary with these types of complaints, we are referring the complaint to your agency for investigation. We will await the results of your investigation before proceeding further. In the event the Commission determines that it is appropriate to schedule an administrative hearing, please advise. Otherwise, we would request the Commission's recommendation with the report of investigation. Please note that Mr. Shepard has filed a case on behalf of Ruth Bennett against these same companies and has indicated that in the event action is not brought within 45 days, he will pursue remedies under RCW 42.17.400.

I have been assigned the file in our office. I am available to answer any legal questions you may have during the course of your investigation.

If you have any questions, please do not hesitate to call me at (360) 753-0543.

Sincerely,

LINDA A. DALTON  
Sr. Assistant Attorney General

LAD:eg

cc: Richard Shepard  
Rob McKenna, Attorney General  
Jeff Goltz, Deputy Attorney General

EXHIBIT #2

1 of 1





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Davis Wright Tremaine LLP

Public Disclosure Commission

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via U.S. MAIL and FACSIMILE

November 7, 2005

Philip E. Stutzman  
Director of Compliance  
Public Disclosure Commission  
711 Capitol Way, Room 206  
P.O. Box 40908  
Olympia, WA 98504-0908


Re: **King Broadcasting Co. – PDC Case No. 06-280**

Dear Mr. Stutzman:

We represent King Broadcasting Company, which does business as KING 5. I am responding to your letter of October 21, 2005 to Mr. Ray Heacox, Vice President and General Manager of KING 5, in which you ask for a response to the 45-Day Citizen Action Letter filed by Richard Shepard. I am also responding to Mr. Shepard's letter of "clarification" dated November 1, 2005.

Mr. Shepard's complaint is baseless and should be dismissed. Airing debates such as the ones that Mr. Shepard complains of is exactly what broadcasters such as KING 5 should do to help create an informed electorate and to meet their obligation to serve the public interest. Finding that the debates amounted to contributions in violation of the campaign finance statute would not only greatly restrict freedom of speech in violation of Article 1, Section 5 of the Washington Constitution and the First Amendment to the United States Constitution, but would also set an extremely dangerous precedent that would likely make broadcast stations hesitant to put on such worthy debates.

As background, KING 5 hosted two debates in 2004 for gubernatorial candidates, one on September 7, 2004, shortly before the primary election, and a second on October 12, 2004, after

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the primary and before the general election. KING 5 used the candidate inclusion criteria created by the Debate Advisory Standards Project of the Center for American Politics and Citizenship at the University of Maryland, [www.debateproject.com/candidate/](http://www.debateproject.com/candidate/), to determine which candidates to invite to participate in the debates. Ms. Bennett was not invited to participate because she did not meet the inclusion criteria set forth by the Debate Advisory Standards Project (seven other candidates were likewise excluded from the September 7 debate for failure to meet the criteria). Both debates were broadcast by KING 5 and were covered by a variety of news media.

The campaign finance statute makes clear that KING 5's hosting and coverage of the debates did not constitute an in-kind contribution to the candidates who participated. The statute defines the term "contribution" to *exclude*

A news item, feature, commentary or editorial in a regularly scheduled news medium that is of primary interest to the general public, that is in a news medium controlled by a person whose business is that news medium, and that is not controlled by a candidate or a political committee.

RCW 42.17.020(15)(b)(iv). KING 5's broadcasts fall squarely within this exclusion, for they were news items or features in a regularly scheduled news medium of primary interest to the general public, and the news medium was not controlled by a candidate or a political committee.

Decisions under 47 U.S.C. § 315(a) also make clear that the debates were an excluded "news item or feature." For example, *Henry Geller*, 95 F.C.C.2d 1236 (1983), *aff'd sub nom. League of Women Voters v. F.C.C.*, 731 F.2d 995 (D.C. Cir. 1983), held that a debate among candidates that had been organized by a broadcaster qualified as "on-the-spot coverage of a news event" and thus was not a "use" of a broadcasting station requiring equal opportunities to all candidates under the statute.

KING 5's news coverage of public opinion polls that it commissioned also qualifies as news items that fall within the exclusion from "contribution" discussed above.

The exclusion of news coverage and features, including coverage of these debates and polls, from the statute's definition of "contribution" is essential to an informed society. Without such an exclusion, any media outlet that did not devote precisely the same minutes of air time or precisely the same number of column inches of newspaper coverage to each and every candidate competing for a position would be deemed to have given in-kind contributions. This would clearly infringe the guarantees of free speech under the Washington and U.S. constitutions, and prevent much of the political coverage that is essential to our democracy.



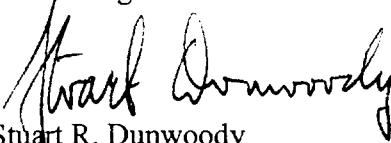
Philip E. Stutzman  
November 7, 2005  
Page 3

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For these reasons, the Public Disclosure Commission should recommend to the Attorney General that he take no action on the complaint.

Very truly yours,

Davis Wright Tremaine LLP

  
Stuart R. Dunwoody

SRD:mnv

cc: Richard Shepard  
King Broadcasting Co.



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NOV 17 2005

# Davis Wright Tremaine LLP

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November 17, 2005

Public Disclosure Commission

Mr. Kurt Young  
Compliance Officer  
Public Disclosure Commission  
711 Capitol Way, Room 206  
P.O. Box 40908  
Olympia, WA 98504-0908

Re: **King Broadcasting Co. – PDC Case No. 06-280**

Dear Mr. Young:

This letter responds to your email to me of November 15, 2005.

As I stated in my letter of November 7, 2005 to Philip Stutzman, KING 5's coverage of debates and polls relating to the 2004 gubernatorial contest constitute news items and features that are excluded from the definition of "contribution" under the campaign finance statute. KING 5's coverage of debates and polling for the governor's race is exactly the sort of discourse that helps ensure an informed electorate, which should, of course, be the objective of the Public Disclosure Commission. The PDC's continued questioning by the Public Disclosure Commission into KING 5's coverage of those debates and polls can only have a chilling effect on the free speech guaranteed to KING 5 under Article 1, Section 5 of the Washington Constitution and the First Amendment to the United States Constitution.

Notwithstanding KING 5's clear exemption from the campaign finance statute for its coverage, we will respond to the questions you raise as follows:

**Criteria used by KING 5 to determine which candidates were invited to participate in the gubernatorial debates.** As previously stated, KING 5 used the criteria set forth at

Mr. Kurt Young  
Compliance Officer  
November 17, 2005  
Page 2

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NOV 17 2005



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NOV 18 2005

<http://www.debateproject.com/candidate/>. For the September 7 debate, KING 5 used the second criterion for the Pre-Election Period, relating to campaign contributions. KING 5 also had polling data on the two Democratic candidates that were invited to the September debate, Christine Gregoire and Ron Sims, and those polling data showed that those candidates also satisfied the first criterion for the Pre-Election Period, relating to polling results. For the October 12, 2005 debate, KING 5 used the first criterion for the Pre-Election Period.

**Other Candidates Not Invited to Participate in the September 7, 2004 Debate.**

KING 5 did not invite the following candidates to participate in the September 2004 debate: Mike the Mover, Eugen Buculei, Don Hansler, Scott Headland, John W. Aiken, Jr., Bill Meyer, Michael Nelson and Ruth Bennett.

**Polling for the 2004 Governor's Race.** KING 5 hired Survey USA to conduct polling relating to the 2004 governor's race. Before the primary election, Survey USA conducted a "favorable/unfavorable" pre-poll naming Dino Rossi, Christine Gregoire, Ron Sims and Phil Talmadge on March 25, 2004. Talmadge dropped out of the race in April 2004. Survey USA then conducted polls on May 6, August 31, and September 13 naming Sims and Gregoire. Between the primary and the general elections, Survey USA conducted surveys on September 22, October 5, October 18, October 26, and November 1, 2004 naming Rossi and Gregoire.

**Selection of Candidates for Governor to Include in Polls.** In the exercise of its news judgment, and because it has limited resources, KING 5 conducts polling only for candidates that it believes are viable ones. In the primary, it determined, based on fundraising data, that the only viable candidates were Republican Dino Rossi and Democrats Christine Gregoire and Ron Sims. KING 5 therefore conducted a poll before the primary on the Gregoire/Sims race. Because Rossi was the only Republican who was a viable candidate, it did not conduct a poll among Republican candidates. For the general election, KING 5 determined that the only viable candidates were Dino Rossi and Christine Gregoire, and therefore conducted a poll on those two candidates.

**How KING 5 Used the Results of the Polls.** KING 5 used the results from these polls in its reporting on the 2004 governor's race. It reported on the poll results in its regularly-scheduled news broadcasts and on "Up Front with Robert Mack"; it posted the poll results on its website, [www.king5.com](http://www.king5.com); and it made the poll results available to the Associated Press. KING 5 did not give the poll results to any candidate.

**Did KING 5 Undertake Any Polling in 2004 with the Encouragement, Consultation, Collaboration or Cooperation of Any of the Candidates for Governor of Washington?** No.

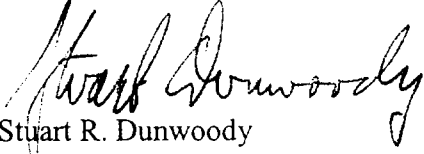
I trust that this has answered your questions. Once again, KING 5 urges the PDC to find Mr. Shepard's complaint to be without merit and to recommend that the Attorney General not pursue it.

Mr. Kurt Young  
Compliance Officer  
November 17, 2005  
Page 3

31

Very truly yours,

Davis Wright Tremaine LLP



Stuart R. Dunwoody

cc: Richard Shepard  
King Broadcasting Co.

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